

The Age Opinion Section May 24, 2009 by Sarah Capper

Compassion could bring end to long fight for justice.

Heather Osland was the catalyst for reform but she is yet to be shown mercy, writes Sarah Capper.

EARLY this month, murder charges were dropped against a Shepparton woman who had stabbed her husband during a violent argument. Victoria's new self-defence laws in cases involving family violence were cited in her defence.

In March, the Director of Public Prosecutions dropped charges against a young woman who killed her stepfather after years of sexual abuse. The DPP told the Supreme Court no jury would convict the woman, and that Victoria's new self-defence laws were considered.

The decision to drop the charges was appreciated by domestic violence survivor Heather Osland, who spent 9½ years in prison after being convicted of killing her abusive husband. But the woman whose fight for justice was a catalyst for changes in the law, which now takes into account cases where women kill violent partners, is no closer to getting either justice or mercy.

Justice and mercy for Ms Osland hinges on finding out why her mercy petition was denied. In a long and complicated legal bid to gain access to government documents that related to her mercy plea, the State Government had provided a guarantee that it would not pursue costs if she lost her appeal seeking documents. Last week, the Government refused to provide any further guarantee.

Ms Osland applied to the State Government for a mercy petition in 1999 on compassionate grounds.

Her case attracted widespread interest, particularly given her adult son David Albion, her co-accused, successfully argued at a retrial he acted in self-defence of himself and his mother. He was acquitted. His mother received a 14½-year term.

Ms Osland's children were awarded crimes compensation for the abuse they witnessed.

In 2001, Attorney-General Rob Hulls rejected Ms Osland's mercy petition. No reasons were given. Instead, Mr Hulls issued a press release stating the Government, in examining her plea, had "appointed a panel of three senior counsel" and that this "joint advice recommends on every ground that the petition should be denied".

Many disagreed, including former premier Joan Kirner, who argued the Government should have made a "moral decision".

Less than two weeks after denying Ms Osland's mercy petition, a major review into homicide law was announced. From prison, Ms Osland applied under Freedom of Information to access documents that might shed light on the Government's decision to deny her pardon. Why was the mercy petition refused? After pursuing the issue through the courts for seven years, she still hasn't found out.

At a VCAT hearing in 2004, Justice Higgins said "there is widespread feeling that this woman has not been well-served by the criminal justice system". Later, VCAT Judge Stuart Morris ruled in Ms Osland's favour, granting access to all documents, stating the case to do so was "unique and powerful".

But the Government has gone to enormous lengths to prevent Ms Osland understanding its rationale for denying mercy. It has fought every step of the way.

Ms Osland won in the High Court, which referred the case back to the Supreme Court's Court of Appeal in late March, which then ruled in the Government's favour.

The Court of Appeal's decision last month revealed that before the Government requested the "joint advice", it sought advice from another QC, Robert Redlich, and that his advice was "materially different" to the joint advice. Mr Hulls did not disclose this advice when he issued the media release that mentioned the three people providing the "joint advice".

In a statement following the court's decision, Ms Osland said: "I am now sure the (initial) individual advice recommended setting me free — why else would the Government fight so fiercely to deny me access to the advice?"

Ms Osland's legal team recently applied for special leave to appeal the latest decision. Without access to the documents there remain many unanswered questions.

Ms Osland's enormous suffering — 14 years of bashings, rapes and threats to her life — was not recognised by the law at the time. Even now, she remains on parole with restrictions on her movement and diminished employment prospects, plus a huge legal debt.

Without a guarantee that the Government won't seek costs if she loses this latest appeal to the High Court, Ms Osland potentially faces even more debt. She must decide this week whether to run this risk.

The Victorian Government can be justifiably proud of some major reforms it has introduced to tackle family violence. But in refusing to provide the reasons why Ms Osland's suffering did not warrant mercy, two issues remain — Ms Osland is denied justice, and women are left wondering what else needs to be demonstrated before a government recognises the suffering and damage caused by domestic violence.